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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,892	12/22/2003	Samy Ashkar	CMCC 512 DIV	2155

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PATREA L. PABST  
PABST PATENT GROUP LLP  
400 COLONY SQUARE  
SUITE 1200  
ATLANTA, GA 30361

EXAMINER

LUKTON, DAVID

ART UNIT PAPER NUMBER

1653

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/743,892

Applicant(s)

ASHKAR, SAMY

Examiner

David Lukton

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15, 18, 21, 22, 26, 29-31 and 34 is/are pending in the application.
- 4a) Of the above claim(s) 21, 22, 26, 29-31 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Applicants' election of Group I (claims 15 and 18) with traverse is acknowledged, as is the elected specie (SEQ ID NO:1)

Applicants have argued that "immunity" from restriction is conferred upon two otherwise distinct inventions if the applicant merely asserts a common thread between them. However, this is not true, especially in those cases, such as the instant case, where the claimed invention does not "define a contribution" over the prior art. Given that applicants elected invention was known at the time of the priority claim, (a) "unity of invention" is lacking, (b) the inventions in question are distinct, and (c) the restriction is justified. Applicants have also argued that a successful search for peptides that promote wound healing would necessarily require a coextensive search for peptides that promote cell migration and chemotaxis. However, this is not necessarily true. There are many references which assert wound healing capability without also explicitly asserting chemotaxis. However, in the event that applicants genuinely believe that Groups I and II are obvious over one another, it is suggested that applicants make an admission to that effect. If such an admission is made, the restriction may be reconsidered. The restriction, however, is maintained at the present time.

Claims 15, 18, 21, 22, 26, 29-31, 34 remain pending. Claims 21, 22, 26, 29-31, 34 are now withdrawn from consideration.

The following is a quotation of 35 USC. §103 which forms the basis for all obviousness rejections set forth in the Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made, absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103.

Claims 15 and 18 are rejected under 35 U.S.C. §103 as being unpatentable over Reich (USP 5124155) in view of Kiefer (*Nucleic Acids Res* 17, 3306, 1989) or Pierschbacher (USP 5,880,092) in view of Kiefer (*Nucleic Acids Res* 17, 3306, 1989).

Reich and Kiefer both teach that RGD-containing peptides are effective to promote wound healing. Neither of these references, however, disclose that RGD is an "osteopontin-derived" peptide. Kiefer provides the amino acid sequence of osteopontin. As is evident, this peptide contains the subsequence RGD. Accordingly, RGD is an "osteopontin-derived" peptide.

Thus, the claims are rendered obvious.



Claims 15 and 18 are rejected under 35 U.S.C. §103 as being unpatentable over Carney (USP 6,630,572) in view of Kiefer (*Nucleic Acids Res* 17, 3306, 1989).

Carney discloses that peptides containing the RGD subsequence are effective to promote wound healing. See, for example, claims 1-16 of the patent. Carney does not disclose that RGD is an "osteopontin-derived" peptide. Kiefer provides the amino acid sequence of osteopontin. As is evident, this peptide contains the subsequence RGD. Accordingly, RGD is an "osteopontin-derived" peptide.

Thus, the claims are rendered obvious.



Two of the references listed on the IDS were stricken therefrom because they were not received.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber, can be reached at 571-272-0925. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



DAVID LUKTON  
PATENT EXAMINER  
GROUP 1800